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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/888,194 06/23/01 YOUNG

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QM02/0801

EXAMINER

CHAME - S.A

ART UNIT

PAPER NUMBER

3753

DATE MAILED:

08/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/888,194

Applicant(s)

Young

Examiner

First Last

Art Unit

1234



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on an amendment filed on 05/23/01
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

Art Unit: 3753

DETAILED ACTION

1. This application has been examined. This action is in response to an amendment filed on May 23, 2001. Claims 1-20 have been canceled. Claims 21-23 have been added. An informational disclosure document filed June 23, 2001, has been filed and copies of "other documents" are requested before it is considered. Dates of that prior art should be submitted in response to this Office action. A listing of and copies of Prior Art from the two parent applications is requested in response to this Office action (for example, "three untitled drawings" filed the patent number 6,089,531 and other prior art documents filed in the parent applications). This application is a continuation of serial number 09/538,881, now US Patent 6,250,605, which is a continuation of serial number 08/968,904, now US Patent 6,089,531, which is a continuation of serial number 08/206,424, now abandoned.

Claim Rejections - 35 USC § 101

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

3. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.


Art Unit: 3753

4. Claims 21-23 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 2, and 27 of prior U.S. Patent Nos. 6,250,605 and 6,089,531, respectively. This is a double patenting rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication communications from the Examiner should be directed to A. Michael Chambers whose telephone number is (703) 308-1016 (FAX (703) 308-7765).



**A. MICHAEL CHAMBERS
PRIMARY EXAMINER
ART UNIT 3753**



1/26/02

(703) 308-1016

The information transmitted is confidential and is only intended for the addressee below. If you inadvertently receive this fax transmission, immediately destroy all copies and call (703) 308 - 0861. Improper use of this confidential information could result in civil fines and criminal prosecution. My return Fax number is (703) 308-7765.

REGARDING THE FOLLOWING CASE(S)

Attorney Docket Number:

Name: Terry Young

U.S. PTO Serial Number: 09/888,194

Pages (including cover sheet):5

NOTES: Copy of first action mailed 08/01/01 as requested.